IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 206 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

ACCURATE ENGG. CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 206 of 1994
MR TANVISH U. BHATT for Applicant
MR SN SOPARKAR, SR.ADVOCATE WITH MRS.SWAMY SOPARKAR for Respondent

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 29/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following two questions have been referred by the Income Tax Appellate Tribunal under Section 256(1) of the Income Tax Act, 1961 at the instance of revenue.

"(1) Whether, the Appellate Tribunal is right in law and on facts in deleting the addition made of Rs.29,34,739/- on account of short term capital gain under Section 45 of the Act?

(2) Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability to the last quarter is paid within the time stipulated for filing of return under section 139(1) the provisions of Section 438 cannot be made applicable?"

2. Mr.Tanvish U.Bhatt, the learned standing counsel appearing on behalf of applicant - revenue stated that he does not press question No.1 in light of the decision rendered today by this Court in Income Tax Reference No.69 of 1993, wherein it is specifically held that goodwill, tradename or trademark as well as the right to accretion in the value of the assets of the proprietary business contributed as capital on 1st April 1984 are separate and independent assets retained by Accurate Trust and do not form part of the properties of the respondent assessee firm. Accordingly, question No.1 is left unanswered as the same is not pressed.

3. In relation to question No.2, Mr. Tanvish U.Bhatt very fairly invited attention to the decision of the Supreme Court in case of Allied Motors (P) Ltd. v. Commissioner of Income Tax, (1997) 224 ITR 677, to submit that the issue raised by second question stands concluded against the revenue.

4. Accordingly, question No.2 is answered in the affirmative i.e. in favour of the assessee and against the revenue applying the ratio of the aforesaid decision in case of Allied Motors (P) Ltd. (supra).

5. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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